

COMPLIANCE OVERVIEW

Provided by Clarke & Company Benefits, LLC

Medicare Part D – Prescription Drug Benefit

Effective Jan. 1, 2006, the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) added a voluntary outpatient prescription drug benefit to the Medicare program, known as Medicare Part D. Employers with group health plans that provide prescription drug coverage to Medicare Part D eligible individuals are subject to disclosure requirements under Medicare Part D.

Medicare Part D requires employers to disclose whether their prescription drug coverage is “creditable” to the Centers for Medicare and Medicaid Services (CMS) and to Medicare Part D eligible individuals. These disclosures must be made on an annual basis and at certain other designated times.

In addition, the MMA created a subsidy to encourage employers with retiree prescription drug plans to maintain this coverage even after the Medicare Part D program became effective.

LINKS AND RESOURCES

- For general information on the Medicare Part D program, including covered benefits, see the Medicare Part D [webpage](#).
- Visit CMS’ creditable coverage [webpage](#) for links to model notices and instructions for reporting to CMS.
- More information about the Retiree Drug Subsidy is available on CMS’ RDS [webpage](#).

HIGHLIGHTS

MEDICARE PART D

- The Medicare Part D program offers prescription drug coverage to everyone who has Medicare coverage.
- Each Medicare Part D plan can vary in terms of cost and the drugs covered.
- Not having creditable prescription drug coverage may trigger a late enrollment penalty for individuals who enroll in Medicare Part D after their initial enrollment period.

EMPLOYER REQUIREMENTS

- Employers that provide prescription drug coverage to individuals who are eligible for Medicare Part D must provide certain notices.
- Medicare Part D includes a drug subsidy to encourage employers to maintain their prescription drug coverage for Medicare-eligible retirees.



CLARKE & COMPANY
BENEFITS LLC

MEDICARE PART D BENEFITS

Medicare beneficiaries may purchase prescription drug coverage by joining a Medicare Prescription Drug Plan or a Medicare Advantage Plan that includes Medicare drug coverage. The monthly premium and drug coverage varies according to the plan in which the Medicare beneficiary enrolls.

Under the Medicare Part D Program:

- ✓ The Medicare beneficiary pays an **annual deductible** of no more than \$415 (\$435 for 2020), plus 25 percent of prescription drug costs between the annual deductible and the **initial coverage limit** (\$3,820 for 2019 and \$4,020 for 2020).
- ✓ Where the Medicare beneficiary's out-of-pocket expenses reach the **catastrophic coverage threshold** (\$5,100 for 2019 and \$6,350 for 2020), the Medicare beneficiary pays the greater of a 5 percent coinsurance or a copayment of \$3.40 for generic drugs (\$3.60 for 2020) or \$8.50 for any other prescription drug (\$8.95 for 2020).
- ✓ Beginning in 2011, the ACA started closing the **coverage gap**, or "donut hole," that Medicare beneficiaries experience between the initial coverage limit and the catastrophic coverage threshold. The coverage gap will be closed mainly through the use of drug discounts and subsidies, until the gap is completely closed in 2020.

Medicare beneficiaries with limited income and resources may qualify for Medicare subsidies to help pay prescription drug costs. In addition, the ACA requires high-income individuals to pay higher Medicare Part D premiums, similar to the Medicare Part B program.

Medicare beneficiaries who are not covered by creditable prescription drug coverage and who choose not to enroll in Medicare Part D before the end of their initial enrollment period may be required to pay higher premiums if they enroll in Medicare Part D at a later date.

EMPLOYER REQUIREMENTS

Employers with group health plans that cover Medicare Part D eligible individuals are required to address a number of issues related to Medicare Part D, regardless of whether they provide retiree coverage. Medicare Part D eligible individuals include those people who are entitled to Medicare benefits under Part A or who are enrolled in Medicare Part B.

Annual Disclosure Requirements: Employers with group health plans that provide prescription drug coverage to individuals who are eligible for coverage under Medicare Part D must comply with certain annual disclosure requirements. Each year, Medicare Part D requires group health plan sponsors to disclose to individuals who are eligible for Medicare Part D and to CMS whether their prescription drug coverage is creditable.

Also, plan sponsors should expect to receive requests for information from their enrollees regarding Part D plan coordination, since Part D plans are required to coordinate benefits with other health plans that provide prescription drug coverage to Medicare-eligible individuals.

Disclosures to Individuals

Employers that offer prescription drug coverage to active or retired employees who are eligible for Medicare, or their spouses/dependents, must notify each Part D eligible individual who is enrolled in or seeks to enroll in this coverage whether the coverage qualifies as creditable coverage under the Part D rules. If the coverage is not creditable, the notice must explain that there are limits on when the individual may enroll in a Part D plan during a year, and that he or she may be subject to a lifetime late enrollment penalty under Part D.

Coverage is creditable if the actuarial value of the coverage equals or exceeds the actuarial value of standard prescription drug coverage under Medicare Part D. In general, the actuarial equivalence test measures whether the expected amount of paid claims under the plan sponsor’s prescription drug coverage is at least as much as the expected amount of paid claims under the standard Part D benefit. Plans with multiple benefit options must apply the actuarial value test for each benefit option. The determination of creditable coverage does not require an attestation by a qualified actuary, unless the plan sponsor is electing the Retiree Drug Subsidy.

At a minimum, creditable coverage disclosure notices must be provided to individuals at the following times:

1	Prior to the Medicare Part D annual coordinated election period—beginning Oct. 15 through Dec. 7 of each year
2	Prior to an individual’s initial enrollment period for Part D
3	Prior to the effective date of coverage for any Medicare-eligible individual who joins the plan
4	Whenever prescription drug coverage ends or changes so that it is no longer creditable or becomes creditable
5	Upon a beneficiary’s request

If the creditable coverage disclosure notice is provided to all plan participants annually, before Oct. 15 of each year, items (1) and (2) above will be satisfied. “Prior to,” as used above, means the individual must have been provided with the notice within the past 12 months. In addition to providing the notice each year before Oct. 15, plan sponsors should consider including the notice in plan enrollment materials provided to new hires.

CMS has provided model disclosure notices for plan sponsors to use when disclosing their creditable coverage status to Medicare beneficiaries. The model disclosure notices are available on CMS’ [website](#).

Disclosure to CMS

Group health plan sponsors are required to disclose to CMS whether their prescription drug coverage is creditable or non-creditable. This disclosure is required regardless of whether the health plan's coverage is primary or secondary to Medicare.

Compliance Tip

If an employer's group health plan does not offer prescription drug benefits to any Medicare Part D eligible individuals as of the beginning of the plan year, the group health plan is not required to submit the online disclosure form to CMS for that plan year.

Also, a plan sponsor who has been approved for the Retiree Drug Subsidy is exempt from filing the CMS disclosure notice with respect to those qualified covered retirees for whom the sponsor is claiming the Retiree Drug Subsidy.

The disclosure must be made to CMS on an annual basis and whenever any change occurs that affects whether the coverage is creditable. More specifically, the Medicare Part D disclosure notice must be provided within the following time frames:

- ✓ Within 60 days after the beginning date of the plan year for which the entity is providing the disclosure to CMS;
- ✓ Within 30 days after the termination of a plan's prescription drug coverage; and
- ✓ Within 30 days after any change in the plan's creditable coverage status.

Plan sponsors are required to use the online disclosure form on the CMS Creditable Coverage [webpage](#). This is the sole method for compliance with the disclosure requirement, unless the entity does not have Internet access.

The disclosure form lists the required data fields that must be completed in order to generate the disclosure notice to CMS, such as types of coverage, number of options offered, creditable coverage status, period covered by the disclosure notice, number of Part D-eligible individuals covered, date the creditable coverage disclosure notice is provided to Part D-eligible individuals, and change in creditable coverage status.

CMS has also provided [instructions](#) for detailed descriptions of these data fields and guidance on how to complete the form.

RETIREE DRUG SUBSIDY

The Medicare Part D program includes an employer subsidy designed to encourage employers to provide prescription drug coverage to Medicare-eligible retirees even though Medicare Part D is available. The Retiree Drug Subsidy (RDS) is available to certain employers that sponsor group health plans covering retirees who are entitled to enroll in Part D but elect not to do so. To participate in the RDS program, eligible employers must submit an application to CMS prior to the beginning of the plan year.

In general, the RDS is equal to 28 percent of each qualifying covered retiree's costs for prescription drugs otherwise covered by Medicare Part D that are attributable to costs between the cost threshold and cost limit. Employers must meet the following requirements to be eligible for the RDS:

- ✓ The employer must provide coverage of retiree health care costs, including prescription drugs, under a group health plan;
- ✓ The plan's retiree prescription drug coverage must be creditable coverage (notices of creditable coverage must be provided); and
- ✓ The employer must submit an attestation that the actuarial value of the plan's retiree prescription drug coverage is at least equal to the actuarial value of the defined standard prescription drug coverage under Part D.

Employers receiving RDS payments do not pay federal income tax on the subsidy payments. In addition, employers receiving the RDS may generally take a tax deduction for their retiree prescription drug costs. However, under the ACA, employers are not allowed to take a deduction for the subsidy amount starting in 2013.

Additional information about the RDS program is available from CMS through its RDS [webpage](#).